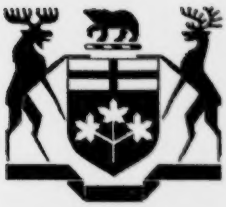


NORMAL FARM PRACTICES PROTECTION BOARD

ANNUAL REPORT

2008-2009

ANNUAL REPORT OF THE NORMAL FARM PRACTICES PROTECTION BOARD
April 1st, 2008 – March 31st, 2009

Introduction

The Normal Farm Practices Protection Board ("the board") is established under The Farming and Food Production Protection Act (FFPPA) to rule on issues pertaining to farm practices.

The act protects farmers from nuisance complaints, provided the farmers are following normal farm practices. Nuisances covered are those arising from odour, dust, flies, light, smoke, noise and vibration. The act also protects farmers from municipal by-laws which restrict their normal farm practices.

The act defines "normal farm practice" as a farm practice that:

a) is conducted in a manner consistent with proper and acceptable customs and standards, as established and followed by similar agricultural operations under similar circumstances, or
b) makes use of innovative technology in a manner consistent with proper advanced farm management practices.

In responding to a complaint, the board conducts a hearing to determine whether the farm practice involved is a "normal farm practice." The board may rule that the practice:

1. is a normal farm practice
2. is not a normal farm practice, or
3. must be modified in a specific manner to make it a normal farm practice.

If the board rules that the farm practice is "normal," the farmer can continue it in spite of the nuisance complaint or the restrictive by-law. If the practice is ruled not normal, the farmer would have to stop it or follow the by-law. The board may also rule that the practice would be normal if specific modifications are made.

Values/Operating Principles

The Normal Farm Practices Protection Boars values:

1. Respect and consideration for participants.
2. Quality of hearing process information provided to participants. .
3. Fairness in the processing of applications.
4. Consideration of participants in the selection of the hearing date.
5. Convenience to participants of the hearing location.
6. Appropriateness of the hearing room set-up.
7. Fairness in the conduction of the hearing.
8. Adequate opportunity for participants to present evidence.
9. Adequate opportunity for participants to respond to the evidence of the opposing party.
10. Satisfaction that the decision reflected the evidence presented at the hearing.

11. Clarity of the reasons why the Board reached its particular decision, as presented in the written Decision.

12. Timing of the release of the decision

13. The plain language used in the decision.

14. Absence of bias.

Board Membership

Under the act, the board consists of at least five members appointed by the Minister of Agriculture, Food and Rural Affairs. The members are appointed from across the province, with various backgrounds and expertise in agriculture and municipal affairs.

During the 2008-2009 fiscal year there were ten members on the board. One member, Bill French, resigned during the year, and a new member, Tom Field, was added. Mr. French is a dairy farmer from Mitchell; Mr. Field raises dairy, beef, sheep and cash crops in Glencoe. Here is the membership list as of March 31, 2009:

Board Members 2008-09

Name	Address	Occupation	Original Appointment	Appointment Expiry Date
Glenn C. Walker, **Chair**	Ridgetown	lawyer	Nov 14, 2001	Jan 7, 2013
Anthony Little, Vice-Chair	London	lawyer	Apr 6, 2005	Apr 14, 2013
Dwayne Acres	Osgoode	cash crop and livestock farmer	June 3, 2005	July 16 2013
Hélène Blanchard	Embrun	dairy farmer	June 3, 2005	July 16 2013
John DeBruyn	Salford	swine farmer	Nov 10, 2005	Nov 13, 2013
Tom Field	Glencoe	dairy, beef, sheep, cash crop farmer	Feb 27, 2009	Feb 26, 2011
Gordon Garlough	Williamsburg	cash crop and beef farmer	Oct 28, 2004	Oct 27, 2009
Marty Byl	Niagara-on-the-Lake	grape grower	July 17, 2007	July 16, 2011
Roger Pelissero	St Anns	poultry farmer	July 17, 2007	July 16, 2011
P. Maxwell Kaiser	Napanee	poultry farmer	July 17, 2007	July 16, 2011

Hearings – Assisting Clients

The board tries to make it easier for farmers and residents to attend hearings:

- It holds the hearing in the municipality where the complaint originates.
- There is no charge for applying for, or participating in, a hearing.
- Legal counsel is not required, but parties may, if they wish, retain legal counsel at their own expense.

To help parties who do not have legal counsel, the board developed a *Citizen's Guide to the FFPPA and the NFPPB* in 2005. The *guide* explains:

- the purpose of the act

- the role of the board
- the concept of "normal farm practice"
- board procedures
- the hearing process.

OMAFRA has also published two brochures to give residents and farmers a brief overview of the act and the board.
- *So you're moving to the Country* - tells new residents what to expect when moving into agricultural areas.
- *Are you preparing for a Normal Farm Practices Protection Board hearing* - gives a brief overview of board hearings.

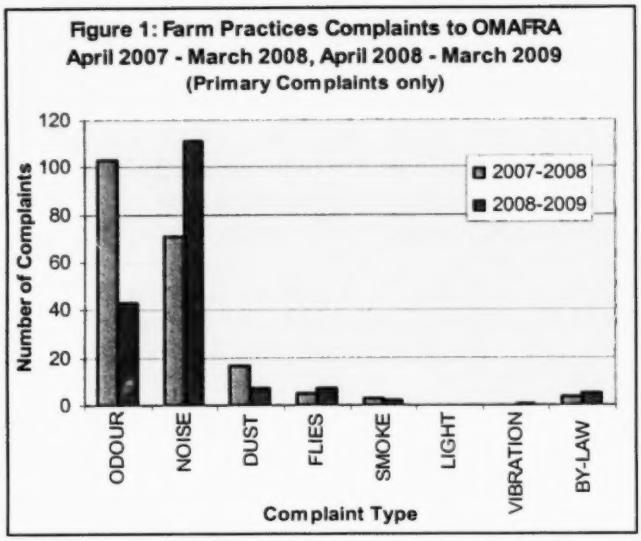
In addition to the *Citizen's Guide*, the board has also published its *Rules of Practice and Procedure*. Lawyers refer to this document to help them prepare for board hearings. The Citizen's Guide, Rules of Practice and other information on the act and the board are available online at http://www.omafra.gov.on.ca/english/engineer/nfppb/nfppb.htm. People can also obtain them from the Agricultural Information Contact Centre at 1-877-424-1300.

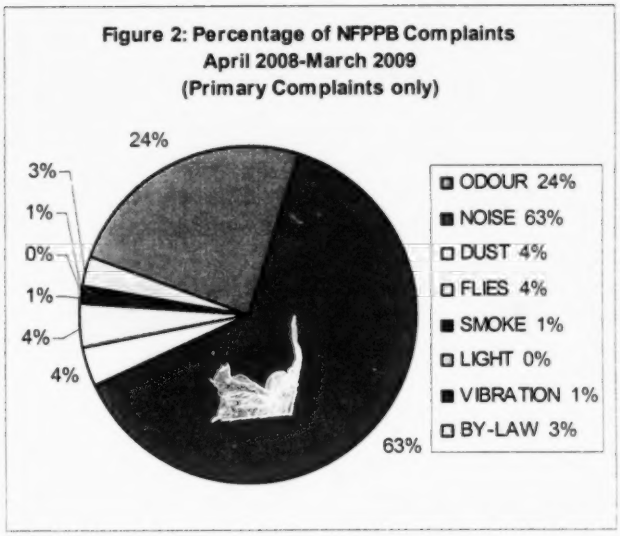
Farm Practices Complaints

OMAFRA received 176 complaints regarding farm practices in 2008-09. This is a reduction from 2007-08, when there were 203 complaints. Table 1 shows the distribution of these complaints by nuisance type in each of the past two years. While half of all complaints (51 percent) were about odour in 2007-08; 63 percent were about noise in 2008-09. The reduction in odour cases was most likely the result of cooler spring and fall temperatures. Most odour cases are related to the spreading of manure; warm, humid weather during manure spreading results in more odour complaints than cooler weather. The increase in noise complaints reflects reaction from residents in the Niagara area to the use of "bird bangers" and other noise-making equipment used to protect grapes from birds. ("Bird bangers" are cannons which emit intermittent blasts to scare birds away from the grapes.) Odour, noise and dust constituted 91 percent of all complaints last year; in 2007-08, they amounted to 94 percent. Complaints about municipal by-laws amounted to three percent last fiscal year, up from two percent in 2007-08.

Table 1: Farm Practice Complaints Received by OMAFRA

	ODOUR	NOISE	DUST	FLIES	SMOKE	LIGHT	VIBRATION	BY-LAW	TOTAL
2007-2008	103	71	17	5	3	0	0	4	203
2008-2009	43	111	7	7	2	0	1	5	176





The distribution of complaints shown in Table 1 is illustrated in a bar graph in Figure 1 and a pie chart in Figure 2. Many cases include complaints about multiple nuisances. For example, a complaint about noise from tractors working at night may also name light and vibration; a complaint about odour from a manure pile may include flies. When the case involves multiple nuisances, the main nuisance is identified as a Primary Complaint; the others are Secondary Complaints.

Through conflict resolution, OMAFRA agricultural engineers and environmental specialists resolve the vast majority of farm practices complaints. On average, the Board hears four cases each year. Board rules establish that complaints must go through OMAFRA's conflict resolution process before coming to a hearing.

Historical Data

In its Preamble, the FFPPA states:

> It is in the provincial interest that in agricultural areas, agricultural uses and normal farm practices be promoted and protected in a way that balances the needs of the agricultural community with provincial health, safety and environmental concerns.

Table 2 demonstrates the board's effectiveness in supporting these principles.

Table 2 (a and b) shows the disposition of all cases brought to the Board (after conflict resolution by the engineers) since its inception in 1990. At that time, the act covered only odour, noise and dust. The other nuisances (flies, light, smoke and vibration) were added when the act was amended in 1998. Table 2 is divided into the periods under the original (Table 2b) and amended (Table 2a) acts.

KEY

UPPER CASE: Main category of complaint lower case: Secondary category of complaint	
F	Decision in favour of farmer
X	Decision against farmer
A	Agreement between parties
W	Withdrawn
(P)	*Pending (continued in new fiscal year; **not counted in cumulative totals**)*
C	Closed: no action by applicant
L	Litigation
D	Referred to another jurisdiction

TABLE 2a. NFPPB CASE DISPOSITION, 1998 - 2009

YEAR	ODOUR	NOISE	DUST	FLIES	SMOKE	LIGHT	VIBRATION	BY-LAW	TOTAL HANDLED	TOTAL COMPLETED
2008-09	*(P)*,a	A,A,*(P)*	F,a						**5**	3
2007-08	X,x,A	X,F	*(P)*	x		x	x	F	6	5
2006-07	X,*p* ,*(P)*	F,X,W,A			C	x	x	X,*(P)*	8	6
2005-06	W,*(P)*	W,A	C,A	w				*(P)*	7	5
2004-05	X,F,X,*(P)*	f						X,*(P)*	6	4
2003-04	X,F,*(P)*	W,X	A,w			w		X,X,X,X,*(P)*	11	9
2002-03	*(P)*	F,W	w			f,w	f	F,W,X,*(P)*	7	5
2001-02	F,F,C,X,*(P)*	X,X		f				X,X	9	8
2000-01	C,W,C,D,*(P)*	W,F						F,X,A,W, W,C,X,L	15	14
1999-00	F								1	1
1998-99	X	F						F	3	3
TOTAL	19	19	4	0	1	0	0	21		63

TABLE 2b. NFPPB CASE DISPOSITION 1990 – 1998

YEAR	ODOUR	NOISE	DUST	FLIES	SMOKE	LIGHT	VIBRATION	BY-LAW	TOTAL
1997-98	X,F	X,f	F,x						4
1996-97									
1995-96		X	X						2
1994-95	X,X			x	x				2
1993-94		x	X						1
1992-93	F	F							2
1991-92		F,F							2
1990-91		X	X						2
TOTAL	5	6	4						15

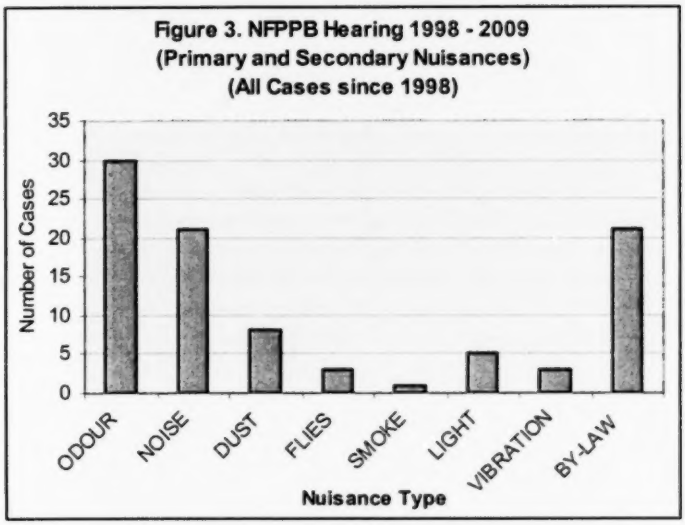
In Table 2 (a and b), primary complaints are identified by upper case letters, secondary complaints by lower case letters.

Below is a summary of the disposition of all cases handled by the Board since the Act was amended in 1998, during the record year 2000-01, and in the most recent years 2007-08 and 2008-09:

1998-2009	63 cases	15 decisions in favour of farmer (F) 22 decisions against farmer (X) 8 agreements between parties (A) 10 withdrawn by applicant (W) 6 closed due to inaction by applicant (C) 1 was referred to other legislation (D) 1 went to litigation (L) *2 pending; continued into 2008-09 (P) (not counted in cumulative totals)*
2000-01	15 cases	2 decisions in favour of farmer (F) 2 decisions supporting by-law (X) 1 agreement reached between parties (A) 4 cases withdrawn by applicant (W) 3 closed due to inaction by applicant (C) 1 referred to other legislation (D) 1 went to litigation (L) *1 pending; continued into 2001-02 (P)*
2007-08	6 cases	2 decisions in favour of farmer (F) 2 decisions against farmer (X) 1 agreement between parties (A) *1 pending; continued into 2008-09 (P)*
2008-09	5 cases	1 decision in favour of farmer (F) 2 agreements between parties (A) *2 pending; continued into 2009-10 (P)*

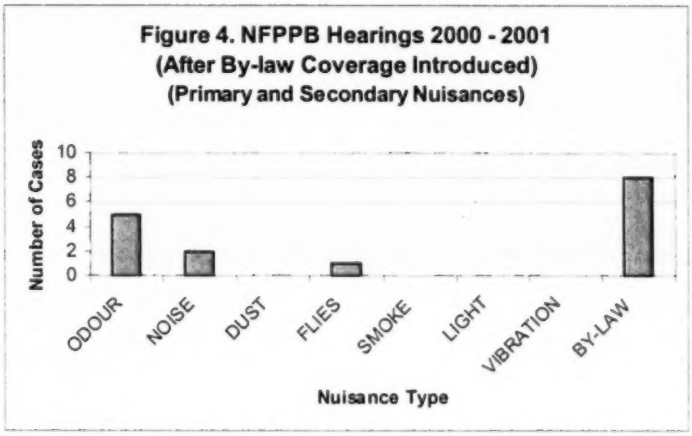
Figures 3 to 6 show the distribution of cases brought to the board in specific years during the period 1998 to 2009. These figures include both primary and secondary complaints.

Figure 3 shows the distribution of all cases brought to the board since 1998.



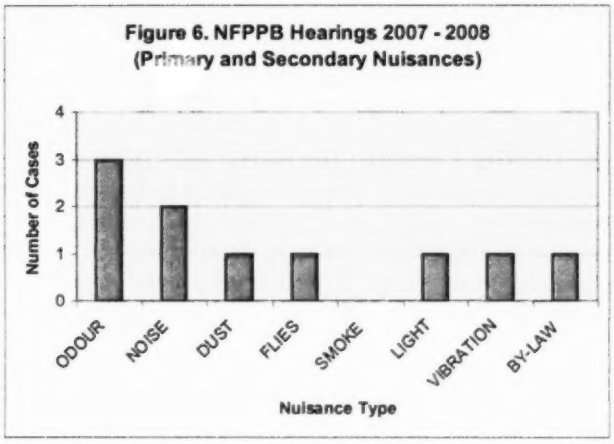
The biggest change brought in by the 1998 amendments was the inclusion of municipal by-laws. Farmers now had recourse to the board if they felt that a municipal by-law was restricting their normal farm practice. To help deal with by-laws, OMAFRA expanded the board membership to include lawyers.

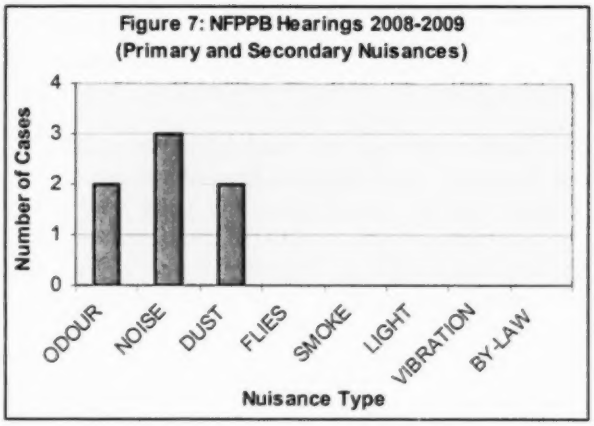
The effect of by-law coverage was most noticeable in 2000-01, when the board handled eight by-law cases (shown in table 2 and figure 4). The board heard several by-law cases in subsequent years up to 2004. Out of ten by-law cases heard during this period, municipalities won eight; a farmer won one and one was withdrawn. Since 2004 farmers have brought only two new by-law cases to the board, indicating that farmers and municipalities understand better the relationship between the act and municipal by-laws. New legislation such as the Clean Water Act is expected to grant new by-law powers to municipalities which may raise by-law complaints in the future.



The year 2000-01 was exceptionally busy for the board. In addition to the by-law cases, there were five odour and two noise cases, amounting to a record total of 15 cases (figure 4). Most of those arose from negative public reaction to the expansion of hog and poultry barns in the wake of the Walkerton tragedy of May 2000. The results of those cases can be seen in Table 2.

Since 2005 the number of odour hearings have decreased (Figures 5,6). This decrease may be due to reduced construction of hog barns because of contraction in the hog industry. By contrast, the board has experienced an increase in noise-related cases, reflecting greater use of equipment protecting grapes and tender fruit from birds. Changes in weather patterns have increased the need to protect these crops from frost damage. Wind machines provide this protection by drawing down upper layers of warmer air towards the grapes. They operate at night, however, and they are very noisy. In the past year there has also been a marked increase in the number of complaints about bird bangers, cannons which emit intermittent blasts to scare birds away from the grapes.





2008-09 Highlights

In 2008-09, the board held hearings, pre-hearing conferences and/or teleconferences for five cases. These cases are presented below:

2007-05 Sault Farm v. Young Sod Farms Inc.
2008-01 McCusker & Comier v. Nashville Poultry
2008-02 Philbrick v. Zimmermann
2008-03 Dubois v. Burkhardt
2008-04 Haynes v. Bayview Flowers

Case: **2007-05: Sault Farm v. Young Sod Farms Inc.**
Address: Wainfleet, R.M. of Niagara
Issue: **Dust**
Dates of Hearing: April 2 and 3, 2008
Location(s) of Hearing: Fonthill, Town of Pelham
Panel Members: Glenn Walker, Marty Byl, Roger Pelissero
Description:
The applicant grew cabbages in a field beside the road. He said that the owners of the neighbouring sod farm removed windbreaks from their fields. The applicant complained that the sod farmers tilled the soil and planted grass seed during an extremely dry and windy summer. The applicant said this caused dust and sand storms that destroyed his five acres of cabbages.
Decision: The Board ruled that the sod operation was consistent with a normal farming practice; the application was dismissed.
Start Date: January 25, 2007 **End Date: May 23, 2008**

Case: **2008-01 McCusker & Comier v. Nashville Poultry**
Address: Kleinburg, R.M. of York
Issue: **Noise, Odour, Dust**
Dates of Hearing: Hearing was scheduled for July 8 and 9, 2008, but an agreement was achieved before those dates and the hearing was cancelled.

Description:
In January 2001 residents complained that the neighbouring poultry farmer was piling manure containing dead chickens neat their home. This caused odour and dust, and noise from coyotes and wolves that were scavenging the manure piles. Conflict resolution attempts by OMAFRA staff were unsuccessful and the Board scheduled a hearing.
STATUS: Prior to the hearing, the parties reached an agreement. The case was withdrawn.
Start Date: January 29, 2008 **End Date: July 7, 2008**

Case: **2008-02 Philbrick v. Zimmermann**
Address: St Catharines, R.M. of Niagara
Issue: **Noise**
Dates of Hearing: August 27 to 29, 2008
Location(s) of Hearing: Smithville (Town of Lincoln)
Panel Members: Tony Little; John DeBruyn, Roger Pelissero
Description:
The applicants requested that the NFPPB rule against the use of bird bangers on a new neighbouring vineyard because they were causing sleep deprivation, illness and stress to the applicant family. They suggested that the farmer use netting instead to protect the vines from birds.
STATUS:
During the hearing, the Board sent the parties to mediation overnight to attempt to resolve the issues, and to return to the Board the following day if that was not successful. The parties reached an agreement, and the applicants withdrew the case.
Start Date: May 5, 2008 **End Date: August 28, 2008**

Case: **2008-03: Dubois v. Burkhardt**
Address: Niagara-on-the-Lake, R.M. of Niagara
Issue: **Noise**
Dates of Hearing: March 17 to 19, 2009
Location(s) of Hearing: Fonthill, Town of Pelham
Panel Members: Glenn Walker, Roger Pelissero, Hélène Blanchard
Description:
The applicants claimed that the neighbouring farmer was using his bird bangers to harass the applicants because they would not sell their property to him. They claimed that the farmer installed an excessive number of bird bangers close to the applicants' property, and would operate the bird bangers from May to January, sometimes all night.
Status: The hearing was held March 17 to 19, 2009, and is scheduled to continue June 15 to 19, 2009.
Start Date: October 22, 2008 **End Date:**

Case: **2008-04: Haynes v. Bayview Flowers**
Address: Jordan, R.M. of Niagara
Issue: **Odour**
Dates of Hearing: Pre-Hearing Conference held February 18, 2009; hearing scheduled for June 15 to 19.
Description:
The applicants complained that odour from the neighbouring farmer's anaerobic digester was preventing them from functioning outside their house, and they were concerned about potential negative health effects.
Status: At the pre-hearing conference the Board initiated a second round of conflict resolution, in addition to the conflict resolution process always held before a case is accepted for a Board hearing. At the end of the fiscal year (March 31, 2009) this second attempt at conflict resolution was proceeding.
Start Date: October 28, 2008 **End Date:**

Annual Meeting of the Normal Farm Practices Protection Board

The NFPPB held its Annual Meeting on March 25, 2009 at the Government of Ontario building at 1 Stone Road West in Guelph. All members attended. Jim Richardson, the new Director of OMAFRA's Environmental Management Branch, welcomed Board members to the ministry. He noted that the Board deals with difficult issues in the nuisance cases it hears. The Environmental Management Branch provides ministry support to the Board.

The Chair reminded members of the Conflict of Interest Rules. The secretary made a presentation on the requirements for government agencies such as the NFPPB under the Accessibility for Ontarians with Disabilities Act (AODA). By January 1, 2010, agencies are required to establish policies, practices and procedures for providing service to people with disabilities, in ways that respect their independence and dignity and provide integration and equal opportunity. The Board set up a committee to work with the secretary in developing these documents. The committee will report to the Board by October 1, 2009. The Board will meet in the fall to discuss the documents.

The Chair and Vice-Chair gave Board members a brief overview of hearing procedures, rules of evidence, expert witnesses, and other hearing principles.

Members passed four motions to amend the Rules of Practice and Procedure:

1. That the Board accept in principle the concept of court reporters being present at all hearings; no recordings to be made at pre-hearing conferences; and that the options listed in Rule 39 be available for motions.
2. That Rule 10. (3) be amended to read: The Board shall give notice of a pre-hearing conference or settlement conference to all parties and to any other person the Board may deem appropriate, at least seven (7) days before the conference is to commence.
3. That the Board agrees to amend Rule 11. (5) to limit the number of pages for faxing; Tony Little will prepare appropriate wording for the Board's consideration.
4. That the Board agrees to amend Rule 23 to make pre-hearing/settlement conferences mandatory in all cases; Tony Little will prepare appropriate wording for the Board's consideration.

The Chair led discussions on the need for Board policies addressing issues such as queries to the Board secretary, and establishment of hearing dates. In several instances, unrepresented parties have been seeking what amounts to legal advice from the secretary, who has then sought direction from the Chair or Vice-Chair. The Chair suggested that a policy be established to the effect that the Board secretary shall not provide advice on the interpretation of the Rules of Practice and Procedure but shall refer the party to the Rules of Practice and Procedure and the Citizen's Guide.

Other motions passed:

- That the Board establish a Manual of Procedures for internal purposes.
- That, regarding hearing dates:
  a. Hearing dates shall be set by the Chair or Vice-Chair at the pre-hearing conference/settlement conference.
  b. The Board's choice of date shall prevail unless a party can demonstrate that to proceed on that date would result in a denial of procedural fairness.
  c. Some deference would be given to counsel with respect to previous commitments at the sole discretion of the Chair or Vice-Chair.

Access to Board Decisions

Summaries of all NFPPB decisions can be found on the NFPPB website http://www.omafra.gov.on.ca/english/engineer/nfppb/nfppb.htm. Full decisions are available electronically or in hard copy by contacting the Agricultural Information Contact Centre at 1-877-424-1300, or by e-mail at ag.info.omafra@ontario.ca.

Performance Measurement

The NFPPB measures its performance in two specific areas:

- *Number of days between receipt of an application for a hearing and response to applicant on whether the application is approved for a hearing (NOTE: an application cannot be considered unless the complaint has gone through the conflict resolution process):* Goal: The performance standard was set at 20 days. Results: The average period lag for approval was 17 days for this reporting period.

- *Number of days between completion of the hearing and issuing the decision.* Goal: The performance standard was set at 60 working days. Results: For this reporting period, only one decision was issued; and that occurred 35 working days after the hearing.

The board is committed to the following values and operating principles listed on page 1:

1. Respect and consideration for participants.
2. Quality of hearing process information provided to participants. .
3. Fairness in the processing of applications.
4. Consideration of participants in the selection of the hearing date.
5. Convenience to participants of the hearing location.
6. Appropriateness of the hearing room set-up.
7. Fairness in the conduction of the hearing.
8. Adequate opportunity for participants to present evidence.
9. Adequate opportunity for participants to respond to the evidence of the opposing party.
10. Satisfaction that the decision reflected the evidence presented at the hearing.
11. Clarity of the reasons why the Board reached its particular decision, as presented in the written Decision.
12. Timing of the release of the decision
13. The plain language used in the decision.
14. Absence of bias.

Because of the small number (5 this year) and the nature of hearings, the Board does not ask hearing participants to rate its performance on these issues. The board relies on the incidence of complaints to assess its performance in these areas. In 2008-2009, no complaints were received on any of these issues.

Financial Performance

The operation of the Normal Farm Practices Protection Board is funded by the Ontario Ministry of Agriculture, Food and Rural Affairs. Separate financial statements are not available since the board is included in the ministry's financial documents. The ministry provides staff, office facilities and supplies, and board operating expenses. Total operating expenditures for the 2008-09 fiscal year was $29,067.42.

Submitted this 25th day of June, 2009.

Glenn C. Walker, NFPPB Chair
Normal Farm Practices Protection Board